



**Department of Corrections**

**ADMINISTRATIVE BULLETIN**

**Subject:** Settlement Procedures for State Personnel Board Cases

**Number:**

**03-02**

**Date Issued:**

May 16, 2003

**Cancelled Effective:**

The purpose of this Administrative Bulletin (AB) is to standardize the California Department of Corrections (CDC) settlement process in order to bring consistency to the resolution of disciplinary cases.

**POLICY**

**Authority to Settle**

- For all cases in which the penalty is less than dismissal from State service, the authority to settle a case resides with the appointing authority or designee.
- For all cases in which the penalty is dismissal from State service, the authority to settle a case resides with the appropriate Chief Deputy Director or designee. An Employee Relations Officer (ERO) or legal representative receiving settlement authority from an appointing authority in a dismissal case may operate under the assumption that the appointing authority has received settlement authority from the appropriate Chief Deputy Director or designee.

**Factors to Consider Prior to Agreeing to Settle**

The primary benefit of a settlement is a firm and final resolution of the case. When a hiring authority considers whether or not settlement is warranted, the following issues must be considered:

- The gravity of the conduct that brought about disciplinary action.
- The risk of harm to the public service if such misconduct recurs.
- The impact of, and rationale behind, court orders or corrective action plans may have on the disciplinary action.
- Whether, in accordance with the principle of progressive discipline, the settlement continues to have the effect of preventing future misconduct.
- Whether mitigating factors or other evidence, including evidence of remorse, were already considered at the *Skelly* hearing or as part of the underlying investigation.
- The length of the State service of the employee.



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- Whether or not the employee has a record of prior discipline.
- Whether conditions can be obtained through settlement (i.e., drug and alcohol testing and counseling, anger management counseling, etc.) that cannot be obtained solely through continued prosecution of the adverse action.
- Flaws and risks in the case (including evidentiary problems, problems with witness availability, questions of law, etc.) not considered or known at the time of the preparation of the adverse action unless the problem has become worse prior to the hearing on the case.
- The finality that settlement brings to a case.

### **Documenting the Process**

If a settlement agreement is reached, CDC's legal representative or the ERO, shall complete the attached CDC Form 3021 (05/03), SPB Case Settlement Report (See Attachment A), which shall then be distributed as set forth on the form. This form may be ordered from Prison Industry Authority on CDC Form 1853, Reproduction Order. This is a one-page form, printed on 8 1/2" x 11", white bond paper, and is available in packages of 500. The Directorate, or designee, to ensure reasonable uniformity in the settlement process statewide, will use this form for audit purposes. While all relevant information must be included on the form, of particular importance is the identification of the manager providing the final settlement authority. The identity of the manager providing settlement authority must be reported under the "Name of Final Decision Maker" heading of the CDC Form 3021.

### **Essential Settlement Language**

Although settlement agreements may vary in form, certain clauses must be included in any settlement agreement. In addition to a recitation of the unique terms for the particular agreement at hand, the document must also include the following key clauses:

#### **Standard Clauses:**

APPELLANT, by his/her signature on this document, agrees to withdraw his/her Appeal to the NOTICE OF ADVERSE ACTION effective \_\_\_\_\_, and to waive any right he/she may have to appeal the NOTICE OF ADVERSE ACTION either before the State Personnel Board or any court of law which might have jurisdiction over the matter. Specifically, APPELLANT waives any rights he/she may have as set forth in sections "\_\_\_" and "\_\_\_" of the



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NOTICE OF ADVERSE ACTION; and, Code of Civil Procedure, Part 3, Title 1, §§ 1067 through 1110b, inclusive.

APPELLANT, by his/her signature on this document, and in exchange for such consideration as is set forth in this STIPULATION AND RELEASE, releases, acquits and forever discharges the State of California, the Youth and Adult Correctional Agency, the DEPARTMENT and their agents, representatives, employees, successors and assigns, of and from any and all demands, actions, causes of action, claims of any kind or nature whatsoever, known and unknown, anticipated or unanticipated, past or present, which may exist as of the date hereof, including but not limited to any such demands, actions, causes of action, or claims in connection with or arising out of the actions taken by the Department in connection with the NOTICE OF ADVERSE ACTION, in this matter, and any other claim under state or federal law, including, but not limited to claims under the Fair Employment and Housing Act, Title VII and/or the Age Discrimination in Employment Act.

APPELLANT is familiar with and has read the provisions of California Civil Code § 1542 and expressly waives to the fullest extent of the law any and all rights he/she may otherwise have under the terms of that Code section which reads as follows:

A general release does not extend to claims which the creditor does not know of or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

APPELLANT executes this release without reliance upon any statement or representation by the DEPARTMENT or its representatives except as set forth in this document. APPELLANT is of legal age and is legally competent to execute this release and accepts fully the responsibility therefore and executes this release after having read the STIPULATION AND RELEASE and after having been advised and after having the opportunity to discuss it thoroughly with APPELLANT'S representative, \_\_\_\_\_, and that APPELLANT understands all of its provisions and that APPELLANT enters into it voluntarily.

The DEPARTMENT and APPELLANT agree that the terms of this settlement, except to the extent that some terms of the agreement may be incorporated into official records of the State Personnel Board by separate document, shall be confidential. The confidentiality agreement shall not be applicable to subsequent legal proceedings to enforce any provision of this agreement nor to any subsequent proceedings before the State Personnel Board to the extent related to a violation of any provision of this agreement.



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This STIPULATION AND RELEASE is freely and voluntarily entered into, and APPELLANT hereby authorizes and orders his representatives of record to withdraw his appeal of the NOTICE OF ADVERSE ACTION, effective \_\_\_\_\_, currently pending before the State Personnel Board (Case No. \_\_\_\_-\_\_\_\_), as agreed in paragraph "\_\_\_" of this STIPULATION AND RELEASE.

**If the Employee Has Agreed to Resign, the Following Clauses Must Be Used:**

On \_\_\_\_\_, APPELLANT agrees that he/she will be deemed to have resigned. This resignation is irrevocable and is not contingent on the action of any other State agency, now or in the future. Appellant further agrees, as part of the consideration and inducement for the execution of the stipulation and release, to never apply for or accept employment with the Youth and Adult Correctional Agency (Agency), including, but not limited to, the Department and the California Youth Authority. If the Agency inadvertently offers appellant a position, and appellant breaches this agreement by accepting a position with the Agency, APPELLANT will be terminated at such time as is convenient to the Agency and APPELLANT hereby waives any right APPELLANT may have to appeal that termination in any forum.

**If the Appellant is Age Forty Years or Older:**

APPELLANT represents that he/she has been notified that he/she has the right to consider this STIPULATION AND RELEASE for at least twenty-one (21) days before its execution and APPELLANT expressly waives this right.

APPELLANT shall have the right to revoke this STIPULATION AND RELEASE for seven (7) calendar days after its execution, and understands that this STIPULATION AND RELEASE does not become effective or enforceable until that revocation period has expired.

The Employment Law Unit shall be available to assist any ERO or appointing authority seeking to specially craft settlement clauses specific to the particular agreement under consideration, or to discuss the reasonableness of any employee's settlement offer.



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Please inform all concerned persons of this AB, which shall remain in effect until incorporated into Department Operations Manual, Chapter 3, Article 22, Progressive Discipline. Any inquiries regarding this bulletin should be directed to Robert Gaultney, Assistant Chief Counsel, Legal Affairs Division, at (916) 445-0495.

Original Signed By

KATHY M. KINSER  
Chief Deputy Director  
Support Services

Attachment